

Assembly Bill 40 (Wolk and Frommer)
Lobbyists contracting with elective state officers

Version: As introduced, December 6, 2004

Status: Referred to Assembly Elections

Urgency measure

Executive Summary

This bill prohibits lobbyists who also contract with an elected state officer from lobbying that officer, her staff and the staff of any committee she chairs, and requires notification to the Secretary of State by lobbyists who enter into a contractual agreement with an elected state officer, as defined. The bill also requires that any payment conditioned on the outcome of an election be disclosed in pre-election reports.

Recommendation

Staff recommends the Commission adopt a position of "oppose unless amended" to shift to the General Fund plaintiffs attorneys' fees and costs arising out of a successful legal challenge, and that the bill also be amended to address issues related to the contingency fee reporting provision.

Summary

This bill would prohibit a lobbyist/lobbying firm from contacting an elected state officer for the purpose of influencing legislative or administrative action during the period that the lobbyist/lobbying firm has a contractual relationship with the elected state officer, as defined, and for the following 6 months.

Specifically, AB 40 would:

- Require a lobbyist to notify the Secretary of State within 14 days of entering into a contractual relationship with an elected state officer, or his or her controlled campaign committee.
- Prohibit a lobbyist, or lobbying firm, from contacting an elected state officer, their staff and the staff of any committee a Member chairs, during, and six months following, the period of time that any of the following persons has a contractual relationship with the elected state officer's controlled campaign committee:
 - A. A lobbyist, or any business entity in which the lobbyist has a 3% or greater ownership interest
 - B. A lobbying firm, any person who has a whole or partial ownership interest in the lobbying firm, or any person who is an officer or exempt employee of the lobbying firm

The bill defines a contractual relationship as:

- A contract or agreement between any of the persons listed above in (A) and (B) and the controlled campaign committee of an elected state officer which entitles the person to compensation of \$1,000 or more per quarter, or \$4,000 or more per year

The bill defines exempt employee as: An employee who performs executive, administrative, or professional, functions and customarily exercises discretion and independent judgment in the performance of those duties as determined by the Industrial Welfare Commission pursuant to Section 515 of the Labor Code.

In addition to the above provisions, AB 40 would require a candidate for elective state office to report, prior to the election, a contract or agreement, entered into by the candidate or his controlled campaign committee, which includes a payment contingent upon the candidate's election to office. The purpose of this provision is to secure timely public disclosure of such agreements, and to ensure that any such payments be included in the candidate's total expenditures for purposes of the voluntary expenditure ceilings.

Background

This bill combines last year's AB 1784 (Wolk) and AB 1785 (Frommer). AB 1784 applied to statewide offices and AB 1785 targeted legislators.

Those bills were precipitated by a series of incidents involving a successful Democratic campaign consultant who is also a registered lobbyist. Newspaper articles reported that the lobbyist threatened members of the Assembly with retribution when they next faced re-election unless they voted for a bill sponsored by one of the lobbyist's clients. The authors of this bill feel they are necessary to limit the influence that consultant/lobbyists may have, as well as the influence of lobbyists who may share certain business relationships with one or more legislators.

Analysis

A purpose of the Political Reform Act is to regulate the activities of lobbyists so that improper influences will not be directed at public officials. (Sec. 81002(b)) By prohibiting contact between lobbyists and officials engaged in a contractual relationship, this legislation furthers the purposes of the Act and addresses concerns that financial relationships between lobbyists and public officials may compromise the integrity of the legislative process.

Staff Comments

- **Content of lobbyist notice to Secretary of State.** The bill would require the FPPC to adopt regulations to provide for the method, content, and disposition of notifications filed pursuant to this section. The lobbying and campaign disclosure manuals would also need to be revised.
- **Possible exceptions to prohibited contact.** The authors may also wish to consider exceptions to the contact prohibited in the bill. For example, the author may want to address situations where the only attempts to influence elected state officers are in the form of a blanket letter to all members of a given committee, caucus or house.
- **Definition of "controlled campaign committee" could be clarified.** The bill's definition of a contractual relationship includes the term, "controlled campaign committee." Although section 82016 defines a "controlled committee," the term "controlled campaign committee" is not used in the Political Reform Act. The authors may want to define this term, thereby clarifying any intent to exclude candidate-controlled ballot measure committees and committees formed for a local office from the provisions of the bills.

- **Definition of a contractual relationship could be modified.** The amount used to define a contractual relationship--\$4,000 per year--could possibly be higher, still reaching the relationships that concern the author, but excluding others that may incidentally arise. For example, a lobbyist's spouse may own a catering company that a candidate uses. This may not be the kind of contract the author intends to invoke the prohibition on communication, but it would under the current language. A higher threshold might avoid such unintended application of the bill's provisions.

Funding for Legal Challenges The Commission may want to request language to deal with costs arising from litigation, in the event this enactment is challenged. In *Levine v. Fair Political Practices Commission*, 222 F. Supp. 2d 1182 (E.D. Calif. 2002), for instance, plaintiffs brought a successful motion for preliminary injunction against enforcement of certain statutory provisions regarding slate mailers. Although the Attorney General's Office may be available to defend the Commission at no charge in these actions, if plaintiffs prevail, costs and attorneys fees would be borne by our agency. For this reason, the Commission may wish to request that each of these measures be amended to include the following language:

If any provision of this chapter is successfully challenged, any attorney's fees and costs shall be paid from the General Fund and the commission's budget shall not be reduced accordingly.